

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR.**

J U D G M E N T

L.I.C. & Ors. vs. Smt.Nirmala Devi & Ors.

S.B.Civil First Appeal No.133/1990
under Section 96 read with Order 41
C.P.C. against the judgment and decree
dated 07.03.1990 passed by Shri
J.P.Bansal RHJS, District Judge, Jaipur
City, Jaipur in Civil Suit No.57/86
(222/88).

Date of Judgment ::::: August 14, 2006

PRESENT

HON'BLE MR.JUSTICE KHEM CHAND SHARMA

Mr.Anurag Agarwal for appellants.

BY THE COURT (ORAL):-

The facts giving rise to this appeal in brief are
that Shri Purshottam Das Khatri husband of Smt.Nirmala Devi
and father of Shyam Lal and Kumari Meera, respondents
herein was holder of Life Insurance Policy No.48952887
issued by the appellant Life Insurance Corporation of
India. The policy commenced from 20.3.1978 but due to non-

payment of premium, the said policy lapsed but the same was renewed again on 8.5.1980. Shri Purshottam Das Khatri died on 30.7.1981. After his death his legal heirs (plaintiff-respondents) claimed the amount of the policy from the appellant but the appellant refused to make payment of the same. In the circumstances above, the plaintiff respondents filed a suit before the trial court claiming a decree for Rs.30,000/- with interest @ 18% per annum. The learned trial court after framing issues, recording evidence of the parties and hearing counsel for the parties vide impugned judgment and decree dated 7.3.1990 decreed the suit and directed the appellant Corporation to make payment of the policy with interest @ 12% per annum from 30.7.1981. Hence, this appeal.

The only contention of the learned counsel for the appellant is that the period of two years under Section 45 of the Insurance Act, 1938 for calling a policy in question on the ground of mis-statement has to be calculated from the date of revival of the policy and not from the date on which the policy was originally effected. Therefore, the suit of the plaintiff-respondents was liable to be dismissed on this count alone. Counsel further contends that the learned trial court, in the impugned judgment, has misconstrued the provisions of Section 45 of the Insurance

Act and, therefore, committed error and illegality in entertaining the suit and decreeing the same.

After hearing learned counsel for the appellant, I have gone through the material and evidence available on record as well as the provisions of Section 45 of the Insurance Act.

Section 45 of the Insurance Act provides that no policy of life insurance, after the expiry of two years from the date on which it was effected, shall be called in question by an insurer on the ground that a statement made in the proposal for insurance or in any report of the medical officer, or referee, or friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false, unless the insurer shows that such statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policy-holder and that the policy-holder knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose.

Their Lordships of the Supreme Court in the case of Mithoolal Nayak vs. Life Insurance Corporation of India

(AIR 1962 SC 814), have an occasion to consider the dispute regarding commencement of period of two years in the matter of a lapsed policy. Taking into consideration the provisions of Section 45 of the Insurance Act, their Lordships have held *it is clear from the wording of operative part of S.45 that the period of two years for the purpose of the section has to be calculated from the date on which the policy was originally effected*. Thus, from the law laid down by their Lordships of the Supreme Court I find no substance in the argument of the learned counsel for the appellant.

No other point has been raised.

For the discussions above, the first appeal fails and is hereby dismissed with no orders as to cost.

(K.C.Sharma), J.

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